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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,273	03/04/2004	Ruey J. Yu	59210.000046	4235

21967 7590 12/14/2006

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EXAMINER

ROYDS, LESLIE A

ART UNIT PAPER NUMBER

1614

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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101792, 273

EXAMINER

ART UNIT

PAPER

12052006

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

In re Application of: Yu et al.

Title of Invention: "BIOAVAILABILITY AND IMPROVED DELIVERY OF ALKALINE PHARMACEUTICAL DRUGS"

Filed: 04 March 2004

Attorney Docket No.:59210.000046

**NOTICE OF NON-RESPONSIVE AMENDMENT**

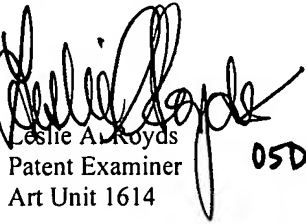
Applicant's response filed November 27, 2006 to the requirement for restriction/election dated October 25, 2006, has been received and entered into the present application. Applicant's election of the Invention of Group I, directed to a composition comprising an alkaline pharmaceutical drug and an alkylalphahydroxy acid, and the election of the species glycolic acid as the particular alkylalphahydroxy acid, is acknowledged.

Applicant states at page 2 of the remarks, "The accompanying amendment cancels claim 30, thereby rendering moot this portion of the election of species requirement."

However, Applicant's cancellation of claim 30 does not render moot the requirement to elect a single disclosed species of alkaline pharmaceutical drug. Though Applicant has cancelled the claim expressly directed to a variety of patentably distinct species of alkaline pharmaceutical drug(s) (i.e., claim 30), it remains that the claims read generically upon the use of any alkaline pharmaceutical drug, which Applicant has defined at pages 10-12 of the originally filed specification (see, e.g., paragraph [0027]), as encompassing an enormous number of structurally and chemically distinct compounds. Search and examination of the entire breadth of this term as it is presently defined in the specification precludes a quality examination on the merits due to the variation and distinct nature of these alkaline pharmaceutical drugs. For example, the discovery of the species fluvoxamine in the patent or non-patent literature as the active pharmaceutical agent of a composition would not necessarily anticipate, suggest or render obvious a composition wherein the active pharmaceutical agent is tetracaine. Accordingly, Applicant's omission of this portion of the election of species requirement is non-compliant and does not satisfy the requirements for election set forth in the previous Office Action of October 25, 2006.

Since the above-mentioned response appears to be a bona fide attempt to reply, Applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction, as well as a proper response to the previous Office Action, in order to avoid abandonment. Extensions of this time period under 37 C.F.R. 1.136(a) are available.

Inquiry concerning this communication or earlier communications from the Examiner should be directed to Leslie A. Royds, whose telephone number is (571)-272-6096. The Examiner can normally be reached Monday through Friday, 9:00 AM to 5:30 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ardin H. Marschel, can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

  
Leslie A. Royds  
Patent Examiner  
Art Unit 1614

05 DEC 2006

 12/9/06  
ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER